

[U.S. Nation Mart, et al, lawsuit,
filed Nov. 6, 2007.]

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES,

Plaintiff,

vs.

U.S. NATION MART, INC., VED PAL,
and BABLI SAINI,

Defendants.

NO.

[CV109668]

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources
("DNR") and for its claims against Defendants states as follows:

INTRODUCTION

1. The release of petroleum from underground storage tanks ("USTs") is a substantial public concern because it threatens public health and safety and the natural resources of the state. See Iowa Code § 455B.472.

2. Defendants failed to comply with DNR regulations requiring the protection of steel USTs from corrosion, the prevention and detection of leaks from UST systems, and the maintenance and availability of UST compliance records. The State of Iowa, therefore, brings this action seeking assessment of civil penalties and issuance of a permanent injunction against Defendants.

PARTIES

3. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the DNR, a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2 (2007).

4. U.S. Nation Mart, Inc. is an Iowa corporation, and operates a retail gasoline facility in Davenport, Scott County, Iowa.

5. Ved Pal is a resident of Davenport, Scott County, Iowa.

6. Babli Saini is a resident of Davenport, Scott County, Iowa.

JURISDICTION

Authority to Regulate USTs

7. Regulation of USTs containing regulated substances, including petroleum products, is within the jurisdiction of the DNR and the Environmental Protection Commission ("EPC"). Iowa Code §§ 455B.471-479.

8. The EPC is authorized to adopt rules related to USTs including, but not limited to, release detection and prevention, monitoring, site assessment, risk classification, tank closure, reporting, corrective action, and financial responsibility applicable to all owners and operators of USTs. Iowa Code § 455B.474. The UST rules adopted by the EPC are contained in 567 Iowa Admin. Code chapters 135 and 136.

9. An "owner" of a UST is a person who owns the UST used for the storage, use, or dispensing of petroleum products. Iowa Code § 455B.471(6)(a)(1); 567 Iowa Admin. Code 135.2.

10. An "operator" of a UST is a person in control of, or having responsibility for, the daily operation of the UST. Iowa Code § 455B.471(5); 567 Iowa Admin. Code 135.2.

Protection of Steel USTs From Corrosion

11. Unless otherwise allowed, owners and operators of a steel UST must protect any underground portion of the UST that routinely contains product from corrosion by cathodic protection. 567 Iowa Admin. Code 135.3(1)"a"(2).

12. "*Cathodic protection*" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. 567 Iowa Admin. Code 135.2.

13. All cathodic protection systems must be operated and maintained to continuously provide corrosion protection. 567 Iowa Admin. Code 135.4(2)"a".

14. All cathodic corrosion protection systems must be tested within six months of installation and at least every three years thereafter or according to another reasonable time frame established by the DNR. 567 Iowa Admin. Code 135.4(2)"b"(1).

15. UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly. 567 Iowa Admin. Code 135.4(2)"c".

16. Records of the operation of the cathodic protection must be maintained to demonstrate compliance with DNR performance standards. 567 Iowa Admin. Code 135.4(2)"d".

Prevention and Detection of Leaks From USTs

17. Owners and operators of petroleum UST systems must monitor the USTs at least every 30 days using a DNR-approved method such as automatic tank gauging, or use monthly product inventory control methods and tank tightness testing, for detection of petroleum releases. 567 Iowa Admin. Code 135.5(2)"a".

18. Monthly inventory controls and tank tightness testing, however, may only be used as a method of monitoring for ten (10) years after a UST is installed or upgraded, whichever occurs later. 567 Iowa Admin. Code 135.5(2)"a"(1).

19. Owners and operators of petroleum UST systems must monitor pressurized underground UST piping that routinely contains regulated substances with an automatic line leak detector, and conduct an annual line tightness test or a DNR-approved method of monthly monitoring that is designed to detect a release from any portion of the underground piping. 567 Iowa Admin. Code 135.5(2)"b"(1)"1" and "2", 135.5(5)"b", 135.5(5)"c".

20. Automatic line leak detectors must be tested annually. 567 Iowa Admin. Code 135.5(5)"a".

21. Owners and operators must use spill and overfill prevention equipment to prevent spilling and overfilling of petroleum, including but not limited to, spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin), and overfill prevention equipment that will automatically shut off flow into the tank or trigger an alarm. 567 Iowa Admin. Code 135.3(1)"c"(1)"1" and "2", 135.3(2)"d".

Maintenance and Availability of UST Compliance Records

22. All UST system owners and operators must maintain records demonstrating (1) all written manufacturer or installer performance claims pertaining to any release detection system used, (2) the results of any UST sampling, testing, or monitoring; and (3) written documentation of all calibration, maintenance, and repair of release detection equipment. 567 Iowa Admin. Code 135.5(6)"a"-"c".

23. Owners and operators must maintain records that include documentation of operation of corrosion protection equipment, UST system repairs, and recent compliance with release detection requirements. 567 Iowa Admin. Code 135.4(5)"b"(2)-(4).

24. Owners and operators must maintain records at the UST site, or at a readily available alternative site, and make the records available to the DNR for inspection upon request. 567 Iowa Admin. Code 135.4(5)"c"(1) and (2).

Authority to Enforce Violations of UST Statutes and Regulations

25. A person who violates a provision of Iowa Code chapter 455B, Division IV, part 8, or rule or order issued thereunder is subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day during which the violation continues. Iowa Code § 455B.477(1).

26. The Attorney General, at the request of the DNR director with approval of the EPC, shall institute any legal proceedings, including an action for injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division IV, part 8, or to obtain compliance with the provisions of said part or the rules or orders issued thereunder. Iowa Code § 455B.477(3).

FACTS

27. On July 10, 2006, Defendants Ved Pal and Babli Saini purchased a retail gasoline station located at 1715 West Kimberly Road, Davenport, Iowa, containing one 6,000-gallon, and two 10,000-gallon petroleum USTs (the "Site").

28. Defendants Ved Pal and U.S. Nation Mart, Inc. are in control of, and have responsibility for, the daily operation of the USTs.

29. Prior to July 10, 2006, Defendants Ved Pal and U.S. Nation Mart, Inc. were in control of, and had responsibility for, the daily operation of the USTs pursuant to various lease agreements.

30. On September 24, 2003, the DNR director issued Administrative Order 2003-UT-14 to Defendant U.S. Nation Mart for UST violations at the Site, including failure to provide the DNR with requested UST records. The Order imposed an administrative penalty of \$10,000.00. U.S. Nation Mart appealed the order, and the appeal is currently pending before the Iowa Department of Inspections and Appeals. A copy of Administrative Consent Order No. 2003-UT-14 is attached hereto as Exhibit A, and by this reference incorporated herein.

31. During a July 12, 2005 inspection of the Site conducted by DNR representative Terry Jones, Mr. Jones noted Defendants U.S. Nation Mart and Ved Pal failed to implement an acceptable method of monthly UST leak detection monitoring, and failed to maintain cathodic protection and release detection records, and did not make them readily available after the inspection.

32. On July 21, 2005, the DNR issued a "Notice of Violation" letter to Ved Pal and U.S. Nation Mart for failing to test the cathodic protection system and record the results at least every 60

days, improper release detection methods and records, and failing to maintain or make readily available the UST records for the site.

33. On August 25, 2005, the DNR issued another "Notice of Violation" letter to Ved Pal and U.S. Nation Mart for failure to conduct a three-year cathodic protection test of the USTs, to conduct annual product line tightness tests and line leak detector tests, to implement a proper release detection method for the USTs, and failure to maintain or make readily available the UST records for the site.

34. On January 31, 2007, DNR representative Terry Jones conducted another inspection of the Site. At the time of the inspection, Mr. Jones discovered the rectifier for the cathodic protection system was turned off and providing no corrosion protection to the USTs, and Defendants failed to maintain a required 60-day log documenting the rectifier readings.

35. Mr. Jones also discovered during the inspection that Defendants failed to conduct annual product line tightness tests and line leak detector tests, and the and spill containment basins contained fuel, water and debris.

36. Mr. Jones also observed that Defendants continued to use the same improper release detection methods identified in the July 12, 2005 inspection, and the UST records for the Site were unavailable for inspection.

37. On February 12, 2007, the DNR issued a "Notice of Violation" letter to Ved Pal and U.S. Nation Mart for the violations documented by Mr. Jones.

VIOLATIONS

38. Defendants operated the UST system without cathodic protection in violation of 567 Iowa Admin. Code 135.3(1)"a"(2), 135.4(2)"a".

39. Defendants failed to inspect the cathodic protection system every sixty days in violation of 567 Iowa Admin. Code 135.4(2)"c".

40. Defendants failed to maintain records of the operation of the UST cathodic protection system in violation of 567 Iowa Admin. Code 135.4(2)"d", 135.4(5)"b"(2), 135.4(5)"c"(1)-(2), and 135.5(6).

41. Defendants failed to perform an annual product line tightness test, or use an alternative method of monthly monitoring that is designed to detect a release from any portion of the underground piping in violation of 567 Iowa Admin. Code 135.5(2)"b"(1)"2".

42. Defendants did not conduct UST release detection monitoring every thirty days with a DNR-approved method such as automatic tank gauging in violation of 567 Iowa Admin. Code 135.5(2)"a".

43. Defendants failed to maintain release detection records at the UST site, or at a readily available alternative site in violation of 567 Iowa Admin. Code 135.4(5)"b"(4), 135.4(5)"c"(1)-(2), and 135.5(6).

44. Defendants failed to conduct annual tests of its automatic line leak detectors in violation of 567 Iowa Admin. Code 135.5(5)"a".

45. Spill basins were filled with debris, fuel and water which prevented the basins from adequately preventing spills when the USTs are being filled in violation of 567 Iowa Admin. Code 135.3(1)"c"(1)"1" and 135.3(2)"d".

WHEREFORE, Plaintiff State of Iowa ex rel., Iowa Department of Natural Resources requests the Court:

- a. assess a civil penalty against Defendants pursuant to Iowa Code section 455B.477(1) (2007) for each day of violation of 567 Iowa Admin. Code 135.3(1)"a"(2), 135.3(1)"c"(1)"1", 135.3(2)"d", 135.4(2)"a", 135.4(2)"c", 135.4(2)"d", 135.4(5)"b"(2), 135.4(5)"b"(4), 135.4(5)"c"(1)-(2), 135.5(2)"a", 135.5(2)"b"(1)"2", 135.5(5)"a" and 135.5(6) not to exceed five thousand dollars (\$5,000) per day, per violation, for as long as the violation continues; and

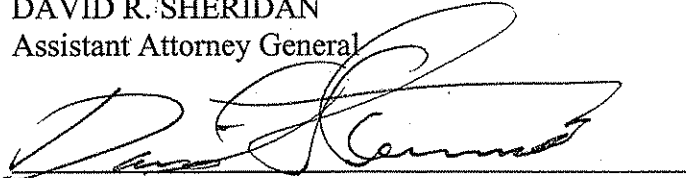
- b. issue an order permanently enjoining Defendants from any further violation of 567 Iowa Admin. Code 135.3(1)"a"(2), 135.3(1)"c"(1)"1", 135.3(2)"d", 135.4(2)"a", 135.4(2)"c", 135.4(2)"d", 135.4(5)"b"(2), 135.4(5)"b"(4), 135.4(5)"c"(1)-(2), 135.5(2)"a", 135.5(2)"b"(1)"2", 135.5(5)"a" and 135.5(6).

Plaintiff further requests such other relief the Court may deem just and proper and that the Court tax the costs of this action to Defendants.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

Jim Humeston

RECORD COPY

File Name

UST 8607236

Senders Initials

(KA)

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

U.S. PETRO MART, INC. AND
SUKHDEV SINGH, INDIVIDUALLY
AND
B & H FOOD & GAS, INC.,
US NATION MART, INC., AND
TEGH, INC.

UST NO. 8607756 Pine St, Davenport, IA
UST NO. 8604845 Bettendorf, IA
UST NO. 8607236 Kimberly Rd., Davenport, IA
UST NO. 8602863 Muscatine, IA

ADMINISTRATIVE ORDER

NO. 2003-UT- 12
NO. 2003-UT- 13
NO. 2003-UT- 14
NO. 2003-UT- 15

U.S. Petro, Inc.
Sukhdev Singh
1107 E. Ogden Ave
Naperville, IL 60563

Sukhdev Singh
1107 E. Ogden Ave.
Naperville, IL 60563

B & H Food & Gas, Inc.
Ashwani Sharma
4607 N Pine St.
Davenport, IA, 52806

US Nation Mart, Inc.
Ved Pal
1630 W 42nd, Apt. 1
Davenport, IA, 52806

TEGH, Inc.
Ajai Agnihotri
1309 Chateau Knoll
Bettendorf, IA, 52722

I. SUMMARY

1. This order requires the parties to cease operation of the underground storage tanks (USTS) at each of the above referenced facilities within thirty (30) days of receipt of this order unless within that time they retain a qualified third party to conduct a compliance audit and immediately assume responsibility for maintaining compliance with Iowa Department of Natural Resources (Department) UST operation and maintenance requirements such as monthly leak detection, maintenance of the corrosion protection systems and record-keeping. You are also ordered to obtain a qualified contractor to provide education and training for all key facility personnel including all onsite managers.

2. The order requires the parties conduct UST and piping tightness tests for all the referenced facilities and submit the reports within ten (10) days of receipt of this order.

STATE'S
EXHIBIT

A

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3. The order requires the parties to submit leak detection records and corrosion protection records within five (5) days of receipt of this order for the past 12 months. They are required to conduct a corrosion protection system inspection or submit documentation that corrective measures have been taken since the last reported corrosion protection inspection.

4. The order also requires the owner and operators for each facility to pay a penalty based on the past failure to maintain records, conduct effective leak detection and maintain corrosion protection on the USTS. The penalty must be paid within 60 days of receipt of this order unless the order is timely appealed as provided in Division VII below. The amount of the penalty is specified in Division VII below.

Division V below explains the requirements of this order in more detail. Your appeal rights are explained in Division VII below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Tom Collins
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8879

Relating to appeal rights:

David Wornson
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/242-5817

II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(10) and 455B.476, which authorize the Director to issue any order necessary to secure compliance with the Iowa Code Division IV, Part 8 and Department rules contained in Chapter 567 I.A.C. 135. Iowa Code sections 455B.109 and 455B.476 and agency rules in Chapter 567 I.A.C. 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. US Petro Mart, Inc. (US Petro) is registered with the Iowa Department of Natural Resources (Department) as the owner of petroleum underground storage tanks (USTS) located the following sites and which are the subject of this order. Given the common ownership of USTS at these facilities and for purposes of administrative efficiency, the Department has consolidated the individual orders applicable to each facility.

Order No.	Location	UST #	Tanks
2003-UT- 12	4607 N. Pine, Davenport, Iowa	8607756	3 USTS
2003-UT- 13	845 State Street, Bettendorf, Iowa	8604845	4 USTS
2003-UT- 14	1715 Kimberly, Davenport, Iowa	8607236	3 USTS

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2003-UT- 15	702 Clay, Muscatine, Iowa	8602863	3 USTS
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2. Sukhdev Singh is a principal stockholder and corporate officer in US Petro. In that capacity he is a person in control of, or having responsibility for the daily operation and regulatory compliance of the USTS located at each of the above referenced facilities.

3. According to information provided by Mr. Sukhdev Singh, B & H Food & Gas, Inc. (B & H) leases the property and operates the USTS and business associated with the USTS at the 4607 N. Pine, Davenport, Iowa location. The property is owned by SSJG Petroleum, Inc. which is affiliated with US Petro. US Petro, Sukhdev Singh and B & H are persons in control of, or having responsibility for the daily operation and regulatory compliance of the USTS at this facility.

4. Richard McDonnell owns the property at 1715 Kimberly Road, Davenport, Iowa. Mr. McDonnell originally leased to Coastal Mart, Inc. who assigned the lease to SSJG Petroleum, Inc. who assigned it to US Petro Mart, Inc. in June 2000. According to Mr. Sukhdev Singh, US Petro sub-leased or assigned the lease most recently to US Nation Mart, Inc. (US Nation). US Nation Mart, Inc. has until recently operated the USTS and business associated with the USTS at this location. The Department has learned that the USTs are currently not in operation and the lease will expire at the end of September 2003. US Petro, Sukhdev Singh and B & H are persons in control of, or having responsibility for the daily operation and regulatory compliance of the USTS at this facility.

5. Tegh, Inc. (Tegh) leases the property and operates the USTS and business associated with the USTS at the 845 State Street, Bettendorf, Iowa location. The property is owned by SSJG Petroleum, Inc. which is affiliated with US Petro, Inc. US Petro, Sukhdev Singh and Tegh are persons in control of, or having responsibility for the daily operation and regulatory compliance of the USTS at this facility.

6. Sukhdev Singh leases the property and operates the USTS and business associated with the USTS at 704 Clay St., Muscatine, Iowa. The property is owned by SSJG Petroleum, Inc. which is affiliated with US Petro. Sukhdev Singh is a person in control of, or having responsibility for the daily operation and regulatory compliance of the USTS at this facility.

7. The Department field office conducted site inspections on the referenced facilities in May 2001. The inspections discovered that with the exception of the Bettendorf site, all sites appeared to be using inventory control as their chosen leak detection method. Records documenting that leak detection was being conducted on any regular basis could not be produced. The inspector sent a copy of the inspection report to US Petro and to the attention of Sukhdev Singh and requested submission of leak detection records and confirmation of the method being used. The inspection report also requested records documenting the required three year corrosion protection records and the sixty day

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corrosion protection monitoring records. These records were to be submitted within two business days.

8. US Petro and Sukhdev Singh failed to submit records or otherwise respond to the request in May 2001.
9. The field office inspector sent a notice of violation dated September 10, 2001 to US Petro and Mr. Sukhdev Singh again requesting various records including leak detection and corrosion protection evaluation records. The notice requested the records be submitted no later than September 28, 2001. The records were not submitted.
10. The Department issued Consolidated Administrative Order No. 2001-UT-29-35 dated September 5, 2001 to US Petro and Sukhdev Singh assessing a \$14,000 administrative penalty based on failure to maintain financial responsibility at these locations and an additional location at 2708 Brady St., Davenport, Iowa. US Petro, Inc. paid a settlement amount of \$8,500 in January 2002. US Petro, Inc. and Mr. Sukhdev Singh were represented by counsel.
11. Having not received the previously requested records, the Department legal services bureau issued a final notice to US Petro and Mr. Sukhdev Singh dated March 11, 2002 and directed to Attorney Patheja citing various leak detection and corrosion protection deficiencies and record-keeping deficiencies at the referenced facilities. Mr. Patheja responded with a letter dated March 22, 2002 which stated; (1) corrosion protection inspections had been conducted in May 2001 subsequent to the field office inspections in May 2001 and these records would be submitted; (2) all five facilities were using Veeder Root automatic tank gauging as the leak detection method and records would be submitted in 30 days; (3) US Petro, Inc. had been advised of the 60 day corrosion protection monitoring requirements. The Department did not receive any of the requested records.
12. In response to a Department legal staff request to Mr. Patheja to provide the promised records, he overnighted tank tightness test reports and corrosion inspection reports for all sites except the Muscatine facility. No leak detection records or 60-day corrosion protection monitoring records were submitted. The Department determined that the corrosion protection inspections were either deficient or showed that some corrective action needed to be taken based on the excessively high voltage readings.
13. The Department issued a final notice to Mr. Sukhdev Singh and US Petro dated May 30, 2002 a copy of which is attached and incorporated into this paragraph. The letter gave the parties until June 14, 2002 to respond and comply with the terms of the letter. The letter reiterated the history of non-compliance, detailed the deficiencies noted in the corrosion protection inspection reports, requested records of corrective actions that have been taken, and once again requested documentation that an approved leak detection method was being employed. The letter stated that inventory control would not be

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accepted as a leak detection method and gave the parties three options; (1) immediately install an alternative leak detection method such as automatic tank gauging (ATG) and pay an administrative penalty; (2) immediately install an alternative leak detection method and retain a third party to provide compliance monitoring and record-keeping; or (3) cease operation of the USTS until they have implemented a record-keeping system and installed an approved alternative leak detection method.

14. The Department received no response.

15. The Department sent a certified letter to US Petro, Inc. dated July 24, 2002 notifying the company that the current UST insurance policy expired as of May 16, 2002. The notice required US Petro to submit a copy of a current certificate of insurance no later than August 15, 2002. The letter further states that if the USTS at these five locations are not covered by an approved financial responsibility mechanism, they must empty the tanks and cease operation until proof is provided. The Department received no response and US Petro continued to operate the tanks.

16. The Department confirmed in late August that all five sites were operating for the second time without an approved financial responsibility mechanism and that the former insurance provider would not insure the tanks due to leak detection and other operation and maintenance deficiencies.

17. The Department sent a certified letter dated August 26, 2002 to US Petro requiring them to cease operation of the USTS at all five sites. The letter also notified US Petro they must provide proof to the Department that they had installed an acceptable leak detection method at all sites, and implemented a record-keeping and employee training program. US Petro ceased operation at all five sites and submitted a letter dated August 30, 2002 which indicated it was in part a response to the Department's May 30, 2002 and August 26, 2002 letters. The letter stated their intention to address deficiencies and obtain financial responsibility coverage. US Petro also provided the Department with the names of the lessees at four of these sites as previously requested in the Department's May 30, 2002 letter. The Department confirmed that except for the Bettendorf site, the other sites did not have ATG leak detection systems as previously reported.

18. The Department issued Consolidated Administrative Order No. 2003-UT-36-40 against US Petro, SSJG Petroleum, Inc. and Sukhdev Singh assessing a \$32,690 penalty based on the recurrent failure to maintain financial responsibility at the five sites. The parties did not appeal the order and the penalty has not been paid.

19. US Petro then conducted tank tightness tests on all the USTS at these five locations. US Petro sent a fax dated August 30, 2002 to the Department which stated they had retained a company, SIRPhoenix, to assist them in implementing statistical inventory control (SIR) as their leak detection method at all locations except the Bettendorf location. They reported that they had retained a company, Tanknology, to assist them in

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completing 60-day corrosion protection monitoring, evaluating the results and reporting deficiencies and records maintenance.

20. Having not received the required compliance records for the other sites, the Department took the initiative to organize a meeting with US Petro representatives and the lessees at these five sites. This meeting was held on February 18, 2003 in Davenport, Iowa. Sukhdev Singh and several of the facility managers attended the meeting along with five Department staff persons. As evidenced by the written agenda, the purpose of the meeting was to review the history of compliance, explain Department rules and regulatory expectations and agree upon a plan to bring these sites into compliance.

21. US Petro and Sukhdev Singh assured the Department that steps had been taken to train facility managers and establish a compliance record-keeping system. It was agreed that the Department field office inspector would stop by each of the facilities to review their records and specifically the on-site cathodic protection and release detection systems to determine if conditions had been corrected or improved since the prior inspections.

22. The Department field office inspected three facilities, 845 State St, Bettendorf, 1715 Kimberly, Davenport, Iowa and 4607 Pine St., Davenport, Iowa. The inspector found that the ATG leak detection records at the Bettendorf site were incomplete and the two sites, which were using SIR leak detection, were not conducting accurate inventory reconciliation such that a reliable SIR method could be used. There were no records to document that 60-day cathodic protection monitoring was being conducted. The inspector concluded that the facility managers could not demonstrate competency or an adequate understanding of the operation and maintenance requirements necessary to comply with department rules.

23. The facilities were again inspected on May 14, 2003 and the inspector found the same pattern of inadequate record-keeping, leak detection and a failure of the on-site managers to demonstrate a basic understanding of particularly the cathodic protection and leak detection requirements and a competency to perform these operation and maintenance requirements.

24. On August 15, 2003, the Department contacted SIR Phoenix, the company US Petro identified as having been retained to conduct statistical inventory reconciliation at several sites. The company informed the Department that monthly inventory records were not being submitted to them on a regular basis and that inventory records that were submitted were not sufficiently accurate in many cases to perform the statistical analysis.

25. The Department records showed the UST insurance at these referenced sites would expire August 29, 2003. The Department contacted the insurer the week of September 2, 2003. The insurer informed the Department that insurance premiums had not been paid and the policy had been cancelled for all the above referenced sites, despite several prior notices to US Petro regarding the failure to renew. The Department immediately

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contacted representatives of US Petro. The insurer notified the Department they would not insure these tank sites until US Petro showed they had complied with leak detection and other regulatory obligations. Subsequently, the insurer notified the Department they would consider insuring the sites if US Petro conducted tank and line tightness tests for all sites. The Department notified US Petro they could sell the remaining product in tanks but would have to cease operation until proof of financial responsibility could be provided. To date, the Department has not been informed that insurance has been obtained.

26. The parties have shown a long and continuous pattern of record-keeping violations and failure to comply with Department leak detection, cathodic protection and other operation and maintenance requirements. The Department has made extraordinary efforts to assist, educate and provide the opportunity for the parties to take corrective measures to demonstrate competency. The Department has concluded that the parties have not been able to demonstrate that they or their key personnel have sufficient training and competence to maintain compliance or that compliance systems have been implemented. The parties have failed to provide a sufficient degree of confidence that the Department's operational and maintenance requirements can or will be performed at these UST facilities.

27. The Department has concluded that until these parties can demonstrate that policies and procedures have been implemented to demonstrate the ability to comply with Department record keeping and operation and maintenance requirements, and that measures have been implemented to demonstrate that key personnel, including on-site managers, have been given the necessary education and training to perform daily operational and maintenance, the USTS at these facilities must be taken out of operation.

IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (§§ 455B.471 - 455B.479) establishes the Underground Storage Tank (UST) program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from underground storage tanks constitutes a threat to the public health and safety and to the natural resources of the state. Iowa Code § 455B.474 authorizes the Environmental Protection Commission to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTs. The Commission has adopted such rules at Chapters 567 I.A.C. 135 and 136.

2. Iowa Code section 455B.476 authorizes the Director of the Department to issue an administrative order requiring the parties to cease violations of the Department rules and to take such corrective action as necessary to ensure that the violations will cease.

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3. Iowa Code § 455B.471(6) defines "owner" of underground storage tanks. These USTS were in service after July 1, 1985. US Petro is an owner as defined and responsible for compliance with all regulatory requirements.
4. Iowa Code § 455B.471(5) defines an "operator" of underground storage tanks as "... a person in control of, or having responsibility for, the daily operation of the underground storage tank." US Petro, Inc. is an operator as defined. Sukhdev Singh in his capacity as principal stockholder and corporate officer is an operator as defined and responsible for taking the actions as required by this order. Sukhdev Singh in his capacity as a lessee is an operator. B & H, US Nation and Tegg are all operators as defined in their capacity as lessees of the business and operators of the USTS at the referenced sites. As operators, they are responsible for compliance with the terms of this order.
5. Department rule 567 IAC 135.4(5)"c" requires that all records be maintained at the UST site and immediately available for inspection or at a readily available alternative site to be provided for inspection upon request. The cited rules are derived from the Environmental Protection Agency (EPA) rules adopted at 40 CFR Part 180. The preamble to the EPA rule (53 Federal Register No. 185, p. 37,140, 9/23/88) indicates that off-site record-keeping may be acceptable if the records can be made available in an expeditious manner as determined by the state agency. If records are maintained at a corporate office, the records must be made available within two business days of the request.
6. Department rules 567 IAC 135.4(5)"b" and 567 IAC 136.20 require owners and operators of USTS to fully cooperate with department requests for documents and to maintain records at the UST site or at a readily available alternative site.
7. Department rules require owners and operators to maintain records of their leak detection method. See 135.5(6). Department rules provide that use of inventory control and tank tightness testing can only be used on upgraded tanks until December 22, 1998 or ten years after installation of the upgrade. See 135.5(2). An alternative method must be installed and operated after those dates. US Petro, Inc. and Mr. Sukhdev have failed to demonstrate that they can use inventory control and tightness testing as a reliable leak detection method. Furthermore, they have not been able to demonstrate when these tanks were upgraded in order to determine if inventory control is still an approved leak detection method. See generally, 135.5
8. Department rules require that impressed current cathodic protection systems be maintained in operable condition according to the manufacturer's specifications. Comprehensive inspections of the systems are required every three years and the system must be monitored every sixty days. See 135.3 and 135.4(2) Records must be maintained and produced as detailed above. Repairs of cathodic protection systems must be made upon discovery and documented with records. Within six months of a repair to a cathodic protection system, it must be tested and inspected. See 135.4(4)

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9. Department rules in Chapter 567 IAC 136 require all owners and operators to maintain an approved form of financial responsibility to coverage damages caused by a new release. Iowa Code section 455B.473(8) makes it illegal to deposit fuel into USTS, which the Department has determined is not covered by an approved financial responsibility mechanism.

10. Iowa Code section 455B.476 grants broad authority to the Director of the Department to issue an order directing owners and operators to cease the violation and to "...take corrective action as necessary to ensure that the violation will cease." The Director has determined that US Petro, Inc., Sukhdev Singh, B & H, US Nation and Tegh have demonstrated a repeated and continuous inability and disregard for the Department's leak detection, corrosion protection, record-keeping and financial responsibility rules. The parties have not been able to demonstrate that they can or will effectively conduct leak detection. The Department has provided every opportunity for the parties to take corrective action and demonstrate their ability to maintain compliance and has taken extraordinary measures to offer assistance.

V. ORDER

THEREFORE, the parties are required to comply with the following terms in order to remedy the cited violations:

1. Cease all future violations of the operation and maintenance rules of the Department, 567 IAC 135.2-6, such as record keeping, release detection and corrosion protection.

2. The order requires the parties conduct UST and piping tightness tests for all the referenced facilities and submit the reports within ten (10) days of receipt of this order.

3. Cease operation of the USTS at the referenced facilities within thirty (30) days of receipt of this notice unless within such time you provide proof of a written contract with a qualified third party the terms of which must provide at a minimum the following. This provision does not apply to the Kimberly Road, Davenport, Iowa location assuming the parties will not be operating under a lease after September 30, 2003.

- The contractor will assume responsibility for conducting a full compliance audit of the owners and operators at all the referenced sites by a qualified UST regulatory professional and submit a report to the Department within forty five (45) days of receipt. The compliance audit must address deficiencies in maintaining compliance with Department rules and provide recommendations as to short term and longer term measures that need to be taken by all parties to assure continuous compliance.
- The contractor will immediately assume full responsibility for maintaining compliance with all operational and maintenance requirements in Department rules 135.2-135.6. Specifically, this contract must establish that the third party will

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immediately assume responsibility for completing monthly leak detection and corrosion protection monitoring in accordance with Department rules and establish a compliance record-keeping system.

- The compliance contract must continue for a minimum of six months. Within that six month period, the owners and operators must satisfy the Department that they have implemented compliance systems and that a third party professional trainer has provided all key personnel including all onsite managers with sufficient education and training to demonstrate regulatory competency. The Department recommends and may require that the parties install automatic tank gauging (ATG) leak detection systems unless they can show competency using an alternative system such as SIR. Upon certification by the third party contractor and approval of the Department, the parties may terminate the third party contract and resume operation and maintenance responsibilities.
4. Submit to the UST section of the Department within five (5) days of receipt of this order the past 12 months of monthly leak detection records and the 60-day corrosion protection test records for each of the referenced facilities.
5. Retain a qualified corrosion protection contractor to conduct corrosion protection inspections on each of the referenced sites within fourteen (14) days of receipt of this order unless you can provide documentation that the corrosion protection deficiencies noted in the Department's May 30, 2002 letter have been corrected.
6. US Petro, Sukhdev Singh and the named corporate operator/lessee for each facility are jointly and severally responsible to pay a penalty in an amount as designated below within 60 days of receipt of this order unless the order is appealed as provide in Division VII below.

Order No.	Location	UST No.	Penalty
2003-UT-	4607 N. Pine, Davenport, Iowa	8607756	\$10,000
2003-UT-	845 State Street, Bettendorf, Iowa	8604845	\$8,500
2003-UT-	1715 Kimberly, Davenport, Iowa	8607236	\$10,000
2003-UT-	702 Clay, Muscatine, Iowa	8602863	\$10,000

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5000.00 per day for each of the violations involved in this matter. The Department reserves the right to assess civil penalties for violations of the terms of this consent order or to take other action to enforce the terms of the consent order.

2. Iowa Code section 455B.109 and section 455B.476 authorizes the Environmental Protection Commission to establish by rule a schedule of administrative penalties up to

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\$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at Chapter 567-Iowa Administrative Code (IAC) 10. The Department has determined that administrative penalties should be assessed for each of the referenced facilities. Each type violation is considered a separate and independent violation subject to the maximum assessments provided in Chapter 567 IAC 10. The Department reserves the right to adjust, modify and expand on the penalty rationale. The following penalty rationale applies generally to each of the referenced sites.

Economic Benefit. The parties have failed to implement an effective leak detection system, maintain corrosion protection and maintain records as required by Department rules at each of the referenced facilities. The parties have not been able to produce records from 2001 to the present to show that any leak detection has been performed or if it has been performed that it has been performed correctly. The lowest cost option for leak detection is use of the SIR method which costs about \$500 per year for sites such as these. For this factor, \$1500 is assessed for the leak detection violations. The costs of implementing and maintaining an effective record-keeping system is estimated to be \$200 per year. For this factor, \$600 is assessed. The cost of undertaking corrective measures on the corrosion protection system could range from \$300 to \$500 depending on what needs to be done such as re-testing at more than one location or rectifier repairs. Therefore, \$200 is assessed for this violation. The total assessment is \$2,300 for each facility except the Bettendorf site.

The Bettendorf site is the only site equipped with an ATG leak detection system. The evidence shows that the parties have failed to properly use this system. The economic benefit is nominal and therefore no economic benefit assessment is made for the leak detection violation for this facility. The total assessment for the Bettendorf site is \$800 (\$600 + \$200 = \$800.)

Gravity: The parties have failed to comply with record-keeping requirements and failed to establish that effective leak detection has been performed at least since year 2001. The corrosion protection inspection, which had not been timely completed showed problems, and the parties have failed to establish they have taken corrective action. Record-keeping violations, leak detection violations and corrosion protection violations are separate violations and subject to the maximum penalty allocations under Department rules. The Department has allocated \$2,700 for failure to conduct leak detection, \$1,000 for record-keeping violations and \$1,000 for corrosion protection violations. The total allocation is \$4,700.

Culpability: The Department has issued numerous notices and warnings regarding these violations over the past three years. The Department has on its own initiative set up a meeting to explain regulatory requirements without achieving compliance. A separate allocation can be made for each violation. For this factor, \$3,000 is assessed.

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VII. APPEAL RIGHTS

Pursuant to Iowa Code § 455B.476, and 567 I.A.C. 561-7.5(1), as adopted by reference by 567 I.A.C. 7, the party may file a written Notice of Appeal to the Environmental Protection Commission within 30 days of receipt of this Order. The party should file this Notice of Appeal with the Director of the Department, and must identify the specific portion or portions of this order he wishes to appeal. The party must also include a short and plain statement of the reasons for appeal. A contested case hearing will then commence pursuant to the Iowa Code, chapter 17A, and the Iowa Administrative Code, chapter 561-7.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.477. The Department reserves the right to request that the Attorney General initiate legal action based on the violation alleged in this order, as well as any subsequent violations in the event the party violates the order, including failure to timely pay any penalty.


JEFFREY R. VONK, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 24 day of

September, 2003